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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GLORIA A. MESTAYER, **Plaintiff,** v. **CAPITAL ONE BANK (USA), N.A. and EXPERIAN INFORMATION SOLUTIONS, INC.,** **Defendants.**	**Case No.: 15-cv-03645-EMC** **THIRD AMENDED COMPLAINT FOR DAMAGES FOR VIOLATIONS OF:** **1.) THE FAIR CREDIT REPORTING ACT, 15 U.S.C. §§ 1681, ET SEQ.; AND** **2.) CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT, CAL. CIV. CODE § 1785.1, ET SEQ.** **JURY TRIAL DEMANDED**

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INTRODUCTION

1. The United States Congress has found the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system. Congress enacted the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq*. ("FCRA"), to insure fair and accurate reporting, promote efficiency in the banking system, and protect consumer privacy. The FCRA seeks to ensure consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy because consumer reporting agencies have assumed such a vital role in assembling and evaluating consumer credit and other information on consumers. The FCRA also imposes duties on the sources that provide credit information to credit reporting agencies, called "furnishers."

2. Plaintiff GLORIA A. MESTAYER ("Plaintiff"), through her attorney, brings this lawsuit to challenge the actions of Defendants CAPITAL ONE BANK (USA), N.A. ("Capital" or "Defendants"), and EXPERIAN INFORMATION SOLUTIONS, INC. ("Experian" or "Defendants") with regard to Defendants' reporting of erroneous negative and derogatory reports to Plaintiff's credit report, as that term is defined by 15 U.S.C. § 1681a(g); Defendants' willful and negligent failure to properly investigate the repeated disputes of Plaintiff concerning the inaccurate data Defendants are reporting in Plaintiff's file, and Defendants' failure to correct such, which Defendants knew or should have known was erroneous and which caused Plaintiff damages.

3. Plaintiff makes these allegations on information and belief, with the exception of allegations that pertain to Plaintiff, or to Plaintiff's counsel, which Plaintiff alleges on personal knowledge.

4. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

5. Unless otherwise stated, Plaintiff alleges that any violations by Defendants were knowing and intentional, and that Defendants did not maintain procedures reasonably adapted to avoid any such violation.

6. Unless otherwise indicated, the use of any Defendants' name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of that Defendants named.

7. Unless otherwise stated, all the conduct engaged in by Defendants occurred in California.

JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. §1331; 15 U.S.C. § 1681p; and, 28 U.S.C. § 1367 for supplemental state claims.

9. This action arises out of Defendants' violations of (i) the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 et seq. ("FCRA") and (ii) the California Consumer Credit Reporting Agencies Act, Cal. Civ. Code §§ 1785.1. et seq. ("CCCRAA").

10. Because Defendants conduct business within the State of California, personal jurisdiction is established.

11. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff resides in the County of San Francisco, State of California which is within this judicial district; (ii) the conduct complained of herein occurred within this judicial district; and, (iii) Defendants conducted business within this judicial district at all times relevant.

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PARTIES

12. Plaintiff is a natural person who resides in the City of San Francisco, County of San Francisco, in the State of California. In addition, Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3); Cal. Civ. Code § 1785.3(c); and, 15 U.S.C. § 1681a(c).
13. Defendant Capital is a corporation whose primary corporate address is in the City of McLean, in the State of Virginia.
14. Defendant Experian is a corporation incorporated in the State of Ohio.
15. Defendant Capital is a furnisher of information as contemplated by FCRA sections 1681s-2(a) & (b), which regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about consumer transactions or experiences with any consumer.
16. For purposes of clarity, it is important to note that settlements have been reached with two original defendants in this action, Nordstrom, Inc. ("Nordstrom") and Experian Information Solution, Inc. ("Experian").
17. However, this Third Amended Complaint ("TAC") involves the inaccurate credit reporting of Capital on Plaintiff's Experian credit report. Therefore, Experian will still be referenced in this TAC to the extent necessary to delineate Capital's violations of the FCRA and CCCRAA.
18. Plaintiff is informed and believes, and thereon alleges, that Defendant Capital, in the ordinary course of business, regularly, on behalf of themselves or others, engage in "debt collection" as that term is defined by California Civil Code § 1788.2(b), and are therefore "debt collectors" as that term is defined by California Civil Code § 1788.2(c).
19. Experian is a "consumer reporting agency" as that term is defined by 15 U.S.C. § 1681a(f).

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20. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a "consumer debt" and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f) and a "debt" as that term is defined by 15 U.S.C. 1692a(5).

21. The causes of action herein also pertain to Plaintiff's "consumer credit report" as that term is defined by Cal. Civ. Code § 1785.3(d), in that inaccurate representations of Plaintiff's credit worthiness, credit standing, and credit capacity were made via written, oral, or other communication of information by a consumer credit reporting agency, which is used or is expected to be used, or collected in whole or in part, for the purposes of serving as a factor in establishing Plaintiff's eligibility for, among other things, credit to be used primarily for personal, family, household and employment purposes.

GENERAL ALLEGATIONS

22. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.

23. Furthermore, Defendants conducted business within the State of California at all times relevant.

24. On or about November 25, 2013, Plaintiff filed for bankruptcy in the United States Bankruptcy Court for the Northern District of California in San Francisco. Plaintiff's case was assigned Case Number 13-32536 (the "Bankruptcy").

25. The obligation ("Debt") to Capital was included in the Bankruptcy.

26. As a result of a recent major class action settlement, Experian, Equifax, and TransUnion have agreed to treat all pre-bankruptcy debts as discharged, unless furnishers provide information showing that a debt was excludable from discharge.[1]

[1] *White v. Experian Info Solutions, Inc.*, Case No. CV 05-01070 (C.D. Cal. Aug. 19, 2008) (lead

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27. Capital, a creditor, received notice of the Bankruptcy filing on or about November 28, 2013 through a Court Certificate of Mailing with Service by the Bankruptcy Noticing Center.
28. Capital, a creditor, also received notice of the Bankruptcy discharge on or about April 10, 2014 through a Court Certificate of Mailing with Service by the Bankruptcy Noticing Center.
29. On or about April 8, 2014, Plaintiff received a bankruptcy discharge.
30. Capital did not file any proceedings to declare the Debt "non dischargeable" pursuant to 11 U.S.C. § 523 *et seq*.
31. Capital also did not request relief from the "automatic stay" codified at 11 U.S.C. §362 *et seq*. while the Plaintiff's Bankruptcy was pending to pursue the Plaintiff on any *personal* liability for any of the underlying Debts.
32. Accordingly, the Debt to Capital was discharged through the Bankruptcy.
33. Further, while the automatic stay was in effect during the Bankruptcy, it was illegal and inaccurate for Capital to report any post-Bankruptcy derogatory collection information, which was inconsistent with the Orders entered by the Bankruptcy Court, including the initial Petition for Relief for Bankruptcy protection (the "Petition").
34. Reporting credit information to a consumer reporting agency is a collection activity.
35. Capital either reported or caused to be reported inaccurate information after the Bankruptcy was filed.

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36. Capital's reporting of post-Bankruptcy derogatory information was inaccurate because a default on an account included in a bankruptcy can occur no later than the bankruptcy filing date, at which point the accounts included in the Bankruptcy were no longer collectable due to the effect of the automatic stay.
37. Thus, by reporting post-Bankruptcy derogatory information, Capital made Plaintiff's Debt appear more recently subject to collection than it really was, which is inaccurate and misleading under the FCRA and CCCRAA.
38. Capital's attempt to collect upon the Debt by reporting post-Bankruptcy derogatory information on Plaintiff's credit report(s), which is a collection activity, was therefore inaccurate and prohibited by the automatic stay and discharge.
39. Capital's reporting of post-Bankruptcy derogatory information was also inaccurate because Capital continued reporting information based on Capital's pre-bankruptcy contract terms with the Plaintiff, which were no longer enforceable upon the bankruptcy filing, thereby rendering the disputed information "inaccurate."
40. For decades, courts have recognized that when a bankruptcy discharge is granted, the order relates back to the date of filing the petition and relieves the debtor from personal liability as of this date.
41. This is because when a debtor voluntarily files for bankruptcy, the petition constitutes an "order for relief" under the particular chapter the debtor wishes to proceed per Bankruptcy Code 11 U.S.C. § 301(a)-(b).
42. When a debtor such as Plaintiff files a chapter 7 petition, Section 727(b) of the Bankruptcy Code provides that the discharge, when entered, applies to "all debts that arose *before the date of the order for relief*." In other words, the discharge relieves the debtor of personal liability for all prepetition debts.

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43. Thus, in relation to the FCRA and CCCRAA, the discharge order rendered the information reported by Capital during the pendency of the bankruptcy inaccurate and patently misleading because the discharge order relieved Plaintiff from any personal obligation to pay Capital as of the date of filing the Bankruptcy petition—November 25, 2013.

44. Moreover, the derogatory, delinquent information furnished by Capital during the pendency of the Bankruptcy was inaccurate and misleading because end users, including potential creditors, may interpret the reported information to mean that Plaintiff incurred new debt during the Bankruptcy or that Plaintiff reaffirmed the debt notwithstanding the discharge.

45. Further, the Consumer Data Industry Association's ("CDIA") Metro 2 format is the credit industry's standardized, objective reporting format used by furnishers to provide information about consumer accounts to consumer reporting agencies.[2]

46. Upon information and belief, Plaintiff alleges that Capital voluntarily chose to subscribe to the Metro 2 format in their credit reporting practices to credit reporting agencies.

47. The CDIA Metro 2 format instructs credit furnishers, including Capital, to report the following way for consumers like Plaintiff who *filed* for Chapter 7 Bankruptcies: (1) report the value indicator "D" or "no data" in the payment history section during a bankruptcy, rather than delinquencies or obligations owing; (2) report the status of the account at the time of the bankruptcy petition (e.g. "Included in Bankruptcy"), rather than the account status as it *would have* existed in the months following the filing of the Bankruptcy Petition if the Bankruptcy Petition had not been filed (e.g. "120+ days delinquent" or "charged off").

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[2] *See* Consumer Financial Protection Bureau, Key Dimensions and Processes in the U.S. Credit Reporting System, available at: http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf

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48. Upon information and belief, Capital has adopted the *Metro 2 Format Manual* as its standard instruction book in respect to credit reporting, which instructs furnishers to *not* report active account balances owing after a consumer has *filed* for a Chapter 7 bankruptcy, such as Plaintiff.

49. Reasonable entities, including potential creditors, would have thus expected Capital to report in compliance with the Metro 2 format, which instructs the reporting of "no data" for months following the filing of a Chapter 7 Bankruptcy.

50. Potential creditors familiar with Capital's standard credit reporting methods would be misled by seeing Capital reporting account balances in respect to the Debt to believe that Plaintiff incurred new debt during the Bankruptcy or that Plaintiff reaffirmed the debt notwithstanding the discharge because Capital's reporting deviated from Metro 2 reporting instructions in this respect.

51. However, Plaintiff did not incur new debt with Capital during the Bankruptcy proceeding or reaffirm the Debt in the Bankruptcy.

52. Accordingly, by reporting post-Bankruptcy derogatory information, Capital did not comply with the Metro 2 format.

53. Even if Capital reported accurately elsewhere in the same account tradeline to Experian that the Debt was included in the Bankruptcy, such reporting would be patently inconsistent, confuse potential creditors, and thus, be inherently inaccurate and materially misleading.

54. Furnishers utilizing the Metro 2 reporting standard correctly is crucial because the Metro 2 system creates a uniform standard for the meaning given to each field provided, which fosters consistency in how furnishers formulate data to report to the credit bureaus, which ultimately leads to objective credit evaluations.

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55. Moreover, the FCRA imposes no requirement or mandate that a furnisher provide any information to a consumer reporting agency. Indeed, the CDIA has repeatedly noted that the act of furnishing information to a consumer reporting agency is completely voluntary.[3]

56. Accordingly, once Plaintiff filed the Bankruptcy, Capital was required to report accurately to the consumer reporting agencies or not report Plaintiff's account at all.

57. Upon information and belief, Plaintiff alleges that Capital did not comply with the Metro 2 reporting standards in respect to Plaintiff's account and reported inaccurately by failing to comport their reporting practices with the implication of Plaintiff's filing of the Bankruptcy and ultimate discharge.

58. Accordingly, Capital's non-compliance with the Metro 2 reporting standards constitutes an inaccurate or misleading statement under the FCRA and CCCRAA, because a furnisher that fails to comply with the uniform and objective Metro 2 reporting standards compromises the credit reporting system.

59. Because credit reporting is a voluntary act, Capital's deviation from the Metro 2 format instructions—the industry standard and its chosen method of reporting—constitutes an inaccurate or misleading statement, because those making credit decisions, who would expect that furnishers like Capital would adhere to the Metro 2 format, would view active account balances reporting after a bankruptcy was filed more negatively than "no data."

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[3] *See, e.g.,* Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing Before the H. Comm. on Fin. Serv., 110 Congr. 50 (2007) (written statement of Stuart Pratt, President and CEO, Consumer Data Industry Association) ("not a single one of the more than 18,000 data furnishers has to provide a single record of data to our members").

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60. In other words, Capital's failure to adhere to the Metro 2 format would prompt those making credit decisions to draw a more negative inference from Capital's reporting of account balances than if Capital accurately reported "no data."

61. Plaintiff subsequently learned that Capital's reported post-Bankruptcy derogatory credit information regarding the obligations on Plaintiff's credit reports, thereby causing erroneous and negative credit information in Plaintiff's credit files and damaging Plaintiff's creditworthiness.

THE CAPITAL ONE BANK (USA), N.A. MISREPORTED CREDIT INFORMATION RE: ACCOUNT NO.: 517805861516*

62. In an Experian Credit Report dated June 19, 2015, Capital reported the following inaccurate, derogatory information for the above-referenced account number:

- In the "History" section: Account Balances of $756 from January 2014 to April 2014.

63. Capital should not have reported derogatory information on Plaintiff's account after November 25, 2013 because Plaintiff filed for bankruptcy on November 25, 2013.

64. Again, the derogatory, delinquent information furnished by Capital during the pendency of the Bankruptcy was inaccurate and misleading because it suggests that the account was still collectable during the bankruptcy, even though the bankruptcy discharge related back to the date Plaintiff filed for bankruptcy.

65. Capital and Experian's inaccurate and negative reporting damaged Plaintiff's creditworthiness.

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66. Experian even reported the Bankruptcy in its "Public Records" section of Plaintiff's credit report, and reflected that the Bankruptcy was filed on November 2013. Therefore, Experian had notice of the Bankruptcy.
67. Moreover, Experian had notice of the Bankruptcy due to multiple other accounts reporting in Plaintiff's Experian credit report notating the Bankruptcy.
68. However, even with notice of the Bankruptcy, Experian allowed Capital to report the above inaccurate and derogatory information, for a debt that was included and discharged in the Bankruptcy, after Plaintiff filed the Bankruptcy.
69. Therefore, Experian's inaccurate and negative reporting of the Debt in light of their knowledge of the Bankruptcy was willful.
70. Accordingly, Experian failed to follow reasonable procedures to assure maximum possible accuracy of the information concerning Plaintiff and violated 15 U.S.C. § 1681e(b).
71. Capital received notice of the Bankruptcy filing on or about November 28, 2013 through a Court Certificate of Mailing with Service by the Bankruptcy Noticing Center.
72. Capital also received notice of the Bankruptcy discharge on or about April 10, 2014 through a Court Certificate of Mailing with Service by the Bankruptcy Noticing Center.
73. Despite receiving notice of the Bankruptcy, Capital furnished derogatory post-Bankruptcy information that it knew or should have known to be inaccurate or incomplete in such a way that would be misleading and thereby adversely affect credit decisions.
74. Rather than using the publicly available Bankruptcy information that Capital knew or should have known existed, Capital chose to continue reporting inaccurately on Plaintiff's credit report.

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75. Capital's credit reporting information is relevant to Plaintiff's credit score, and Capital's inaccurate reporting is misleading and therefore adversely affects Plaintiff's creditworthiness.

76. Therefore, Capital's inaccurate and negative reporting of the Debt in light of their knowledge of the Bankruptcy was willful.

77. Through this conduct, Capital has violated Cal. Civ. Code § 1785.25(a) by furnishing information to Experian, a consumer reporting agency, that Capital knew or should known was inaccurate.

78. On or about July 8, 2015, Plaintiff disputed Capital's reported information regarding the Debt pursuant to 15 U.S.C. § 1681I(a)(2) by notifying Experian, in writing, of the incorrect and inaccurate credit information furnished by Capital.

79. Specifically, Plaintiff sent a letter, via certified mail, to Experian (the "Experian Dispute Letter"), requesting the above inaccurate information be removed.

80. The Experian Dispute Letter further requested that Experian:

- Immediately delete the account and the disputed derogatory information from [Plaintiff's] credit report.
- The discharged debt should be reported with an account balance of $0 with a status of "current."
- Further, there should be no post-bankruptcy activity reported on this account. The date of last activity on this account should pre-date [Plaintiff's] bankruptcy filing date, November 25, 2013, since a default on this account occurred no later than the Bankruptcy filing date.
- Any post-bankruptcy derogatory information should be immediately deleted from [Plaintiff's] report.

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- If [Experian] do[es] not immediately delete this from [Plaintiff's] credit report, please include a 100-word statement in [Plaintiff's] credit report of all the disputed information contained in this letter regarding this account.

81. Upon information and belief, Experian timely notified Capital of Plaintiff's dispute, but Capital continued reporting inaccurate, derogatory information.
82. Capital was required to conduct a reasonable reinvestigation into this specific account on Plaintiff's consumer report pursuant to 15 U.SC. § 1681s-2(b)(1)(A).
83. On or about July 21, 2015, Plaintiff received notification from Experian that Capital and Experian received notice of Plaintiff's dispute pursuant to 15 U.S.C. § 1681i(a)(6) and were providing the results of the reinvestigation.
84. However, rather than remove all the above derogatory information from Plaintiff's report, Capital and Experian simply left derogatory information on Plaintiff's report. Specifically, Capital and Experian continued to report the following inaccurate and derogatory information on Plaintiff's credit:
    - In the "History" section: Account Balances of $756 from January 2014 to April 2014.
85. Experian did not provide notice to Plaintiff that his dispute was "frivolous or irrelevant," pursuant to 15 U.S.C. § 1681i(a)(3).
86. As discussed above, included in the Experian Dispute Letter was Plaintiff's statement of dispute, pursuant to 15 U.S.C. § 1681i(b).
87. However, despite Experian never notifying Plaintiff that her dispute was "frivolous or irrelevant," they failed to notate that Plaintiff disputed the above reporting in their subsequent reporting, as required by 15 U.S.C. § 1681i(c).
88. Capital failed to provide notice of dispute to Experian as required by 15 U.S.C. §1681s-2(a)(3).

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89. Accordingly, Capital failed to conduct a reasonable investigation with respect to the disputed information as required by 15 U.SC. § 1681s-2(b)(1)(A) by:

   a. Failing to remove all of the disputed and incorrect information, and
   b. Failing to notate, as required, Plaintiff's dispute.

90. Upon information and belief, Capital's investigation was unreasonable. More specifically, Capital, should have discovered from its records, including official notices sent from the Bankruptcy Noticing Center and the Experian Dispute Letter, that the information Capital was reporting was inaccurate and patently misleading because it suggested that Plaintiff's account with Capital was collectable during the Bankruptcy and because Plaintiff's bankruptcy discharge relates back to the date Plaintiff filed for bankruptcy.

91. Moreover, as discussed, it is part of Capital's standard credit reporting policies and procedures, in adherence to the Metro 2 format, to *not* report active account balances owing after a consumer has *filed* for a Chapter 7 bankruptcy, such as Plaintiff.

92. Therefore, a reasonable investigation would have led to Capital realizing their error of reporting active account balances owing after the Bankruptcy filing date, despite Metro 2 instructions dictating otherwise, and accordingly remedying the error by applying their standard Metro 2 policy of not reporting active account balances owing after a Chapter 7 bankruptcy was filed.

93. Accordingly, Capital failed to conduct a reasonable investigation with respect to the disputed information as required by 15 U.SC. § 1681s-2(b)(1)(A).

94. Accordingly, Capital failed to review all relevant information provided by Plaintiff in the dispute to Experian, as required by and in violation of 15 U.SC. § 1681s-2(b)(1)(B).

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95. Due to Capital and Experian's failure to investigate, they each further failed to correct and update Plaintiff's information as required by 15 U.S.C. § 1681s-2(b)(1)(E), thereby causing continued reporting of inaccurate information in violation of 15 U.S.C. § 1681-s(2)(b)(1)(C).

96. Accordingly, Experian failed to follow reasonable procedures to assure maximum possible accuracy of the information concerning Plaintiff and violated 15 U.S.C. § 1681e(b).

97. Plaintiff's continued efforts to correct Capital and Experian's erroneous and negative reporting of the Debt by communicating Plaintiff's dispute with Capital and Experian were fruitless.

98. Capital and Experian's continued inaccurate and negative reporting of the Debt in light of its knowledge of the actual error was willful.

99. Capital's failure to correct the previously disclosed inaccuracies on Plaintiff's credit report was intentional and in reckless disregard of its duty to refrain from reporting inaccurate information. Accordingly, Capital willfully and negligently failed to comply with its duty to reasonably investigate Plaintiff's dispute.

100. Capital and Experian's inaccurate and negative reporting damaged Plaintiff's creditworthiness.

101. By inaccurately reporting account information relating to the Debt after notice and confirmation of its errors, Capital and Experian failed to take the appropriate measures as determined in 15 U.S.C. §§ 1681-s(2)(b)(1)(D) and (E).

102. Through this conduct, Capital has violated Cal. Civ. Code § 1785.25(a) by furnishing information to Experian, a consumer reporting agency, that Capital knew or should known was inaccurate.

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CAUSES OF ACTION

COUNT I

VIOLATION OF THE FAIR CREDIT REPORTING ACT

15 U.S.C. §§ 1681 ET SEQ.

[AGAINST DEFENDANT CAPITAL]

103. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

104. The foregoing acts and omissions constitute numerous and multiple willful, reckless, or negligent violations of the FCRA, including, but not limited to, each and every one of the above-cited provisions of the FCRA, 15 U.S.C. § 1681.

105. As a result of each and every negligent noncompliance of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681o(a)(1); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681o(a)(2), from Capital.

106. As a result of each and every willful violation of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(1); statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive damages as the Court may allow, pursuant to 15 U.S.C. § 1681n(a)(2); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from Capital.

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COUNT II

VIOLATION OF THE CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT

CAL. CIV. CODE § 1785.1 ET SEQ.

[AGAINST DEFENDANT CAPITAL]

107. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

108. The foregoing acts and omissions constitute numerous and multiple violations of the California Consumer Credit Reporting Agencies Act.

109. In the regular course of its business operations, Capital routinely furnish information to credit reporting agencies pertaining to transactions between Capital and Capital's consumers, so as to provide information to a consumer's credit worthiness, credit standing and credit capacity.

110. Because Capital is a partnership, corporation, association, or other entity, and is therefore a "person" as that term is defined by Cal. Civ. Code § 1785.3(j), Capital is and always were obligated to not furnish information on a specific transaction or experience to any consumer credit reporting agency if they knew or should have known that the information is incomplete or inaccurate, as required by Cal. Civ. Code § 1785.25(a). Since Capital received notice of the Bankruptcy from the Bankruptcy Court and received the Experian Dispute Letter informing Capital that Plaintiff's accounts were reporting inaccurately, Capital should have adjusted Plaintiff's accounts accordingly, but yet failed to do so.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Capital:

- An award of actual damages, in an amount to be determined at trial or damages of a maximum of $1,000 pursuant to 15 U.S.C. § 1681n(a)(1)(A), against Capital for each incident of willful noncompliance of the FCRA;
- An award of punitive damages, as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2), against Capital for each incident of willful noncompliance to the FCRA;
- An award for costs and reasonable attorney's fess, pursuant to 15 U.S.C. § 1681n(a)(3), against Capital for each incident of negligent noncompliance of the FCRA;
- An award of actual damages in an amount to be determined at trial pursuant to 15 U.S.C. § 1681o(a)(1) against Capital for each incident of negligent noncompliance of the FCRA;
- An award of costs and litigation and reasonable attorney's fees pursuant 15 U.S.C. § 1681n(a)(3) and 15 U.S.C. § 1681o(a)(2) against Capital for each incident of noncompliance of the FCRA;
- An award of actual damages, in an amount to be determined at trial, pursuant to Cal. Civ. Code § 1785.31(a)(2)(A), against Capital;
- Award of attorneys' fees and costs pursuant to Cal. Civ. Code § 1785.31(a)(1); and, Cal. Civ. Code § 1785.31(d) against Capital;
- An award of punitive damages of $100-$5,000 per willful violation of Cal. Civ. Code § 1785.25(a), pursuant to Cal. Civ. Code § 1785.31(a)(2)(B) against Capital;
- For equitable and injunctive relief pursuant to Cal. Civ. Code § 1785.31(b) against Capital;
- Any and all other relief the Court deems just and proper.

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Dated: July 20, 2016

Respectfully submitted,

LAW OFFICE OF CLARK OVRUCHESKY

By: /s/ Clark Ovruchesky
CLARK OVRUCHESKY, ESQ.
ATTORNEY FOR PLAINTIFF

TRIAL BY JURY

111. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: July 20, 2016

Respectfully submitted,

LAW OFFICE OF CLARK OVRUCHESKY

By: /s/ Clark Ovruchesky
CLARK OVRUCHESKY, ESQ.
ATTORNEY FOR PLAINTIFF

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CERTIFICATE OF SERVICE

Mestayer v. Experian Information Solutions, Inc. et al.
Case No: No: 15-cv-03645-EMC

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of San Diego, State of California, and not a party to the above-entitled cause.

On July 20, 2016 I served a true copy of:

- **Plaintiff's Third Amended Complaint**

[X] By ECF: On this date, I electronically filed the following document(s) with the Clerk of the Court using the CM/ECF system, which sent electronic notification of such filing to all other parties appearing on the docket sheet.

I declare under penalty of perjury that the above is true and correct (and that I am employed in or by the office of a member of the bar of this Court at whose direction the service was made).

Executed on July 20, 2016 San Diego, CA.

By: /s/ Clark Ovruchesky
CLARK OVRUCHESKY, ESQ.
ATTORNEY FOR PLAINTIFF